

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 31, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Dick Esseks, Gerry Krieser, Roger Larson, Melinda Pearson, Lynn Sunderman, Mary Bills-Strand and Tommy Taylor. Marvin Krout, Kent Morgan, Ray Hill, Mike DeKalb, Brian Will, Ed Zimmer, Duncan Ross, Tom Cajka, Greg Czaplewski, Jean Walker and Michele Abendroth of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and announced the reappointments of Tommy Taylor and Roger Larson for an additional six year term, expiring August 24, 2011.

Ray Hill of Planning staff introduced the new planner in the Development Review Division, Joe Rexwinkle.

Bills-Strand then called for a motion approving the minutes for the regular meeting held August 17, 2005. Carroll moved approval, seconded by Larson and carried 9-0: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Sunderman, Bills-Strand and Taylor voting 'yes'. Bills-Strand opened nominations for Chair for a two-year term. Taylor nominated Jon Carlson. There were no other nominations and Jon Carlson was unanimously elected as Chair.

Chair Carlson then asked for nominations for Vice-Chair. Bills-Strand nominated Eugene Carroll. Esseks nominated Tommy Taylor. Eugene Carroll was elected Vice-Chair by ballot vote of 5-4.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

August 31, 2005

Members present: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **COUNTY CHANGE OF ZONE NO. 05058, CHANGE OF ZONE NO. 05059, PRE-EXISTING SPECIAL PERMIT NO. 23F, PRE-EXISTING SPECIAL PERMIT NO. 33A, SPECIAL PERMIT NO. 1629F, SPECIAL PERMIT NO. 05042 and SPECIAL PERMIT NO. 05043.**

Ex Parte Communications: None.

Taylor moved to approve the Consent Agenda, seconded by Bills-Strand and carried 8-0: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Bills-Strand, and Taylor voting 'yes'; Sunderman declared a conflict of interest.

Note: This is final action on Pre-Existing Special Permit No. 23F, Pre-Existing Special Permit No. 33A and Special Permit No. 05042, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

COMPREHENSIVE PLAN AMENDMENT NO. 05015,
TO AMEND THE COMPREHENSIVE PLAN BY INCLUDING
THE “DOWNTOWN MASTER PLAN” ON THE LIST OF “SUBAREA PLANS”.
PUBLIC HEARING BEFORE PLANNING COMMISSION: August 31, 2005

Members present: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. Kent Morgan, Assistant Director of Planning, presented the proposed Comprehensive Plan Amendment to incorporate “by reference” the proposed Downtown Master Plan document. Not included in this amendment are the draft “Design Guidelines” for Downtown. Those guidelines are being processed separately and are not part of this Master Plan adoption process.

Morgan went on to state that this Master Plan is the first true “Master Plan” for Downtown Lincoln in over 30 years. This Plan will help guide development and investment decisions for years to come. The Plan offers a long term vision respectful of Downtown’s historical and architectural legacy, while recognizing Downtown’s role in meeting our growth objectives for the 21st century.

This Master Plan is about balance, flexibility, cooperation, and the inevitability of change. The Plan crafts a broad vision using policies, projects, and processes to balance the diversity of

Downtown interests. The Plan is flexible in its design. It acknowledges the long term character of the development process and the need to adapt to evolving situations. The Plan embraces a spirit of cooperation. Relationships in Downtown are perhaps more synergistic than in any other part of the city. The Plan urges existing and future commissions, organizations, institutions, businesses, and other interests to remain active in the Plan's fulfillment. It seeks support for the "common good" founded on a sense of mutual respect. And lastly, the Plan accepts the inevitability of change. This may not be a popular notion but is a realistic one. Today's Downtown is not the same Downtown as it was in 1974 when the last Master Plan was adopted; nor was that Downtown the same as it was in 1944. Downtowns are not stagnate areas. They must evolve to thrive or they will not long survive.

Morgan pointed out that the Plan is the product of many individuals and organizations. Four community workshops were held, with 200 to 300 people attending each session. A 22-member Downtown Action Team, appointed by the Mayor, oversaw work on the study. The Plan was discussed with dozens of groups – many two, three, or four times. Part of the Plan's foundation is a market analysis of the greater Lincoln area prepared by the research firm of ERA. ERA projects that over the next 20+ years, Downtown can support an additional two million square feet of office space; 600,000 square feet of retail space; 2,000 new dwelling units; and 1,000 new hotel rooms. While these figures may sound ambitious, they are consistent with recent local trends. Over the last 15 years, Downtown's inventory of total occupied space has increased by nearly two million sq. ft., pushing Downtown's current occupied space to nearly 13 million square feet.

Other key themes in the Plan include:

--Strengthening Private-Public Relationships - The ultimate success of Downtown resides in strong, affirmative, and lasting relationships between the public and private sectors. The same characteristic giving Downtown its uniqueness – namely, its diversity of interests and land uses – is what can make the Plan successful. We must all work toward common goals that ultimately benefit everyone.

--Retaining and Expanding Retailing Opportunities – Downtown Lincoln has a hardy, thriving contingent of retail establishments. The Plan looks to add to this success by expanding the market for Downtown retailing. It's not about replacing success; it's about creating a strategic model that adds to the retail dollars spent in Downtown.

--Building onto the Existing Residential Base – Downtown living is alive and well, and is on the brink of a period of accelerated growth. The 2,000 new dwelling units projected over the next 20 years is realistic if we create an affordable and diverse housing stock, and if we provide the neighborhood amenities Downtown residents can reasonably expect.

--Sustaining Downtown's Past – This Plan embraces the historical and architectural legacy of Downtown Lincoln. It affirms the role Downtown has played and will continue to play as a focus for government, private economic development, education, culture, and entertainment. Respecting the past is paramount – and this lies at the foundation of the Plan.

--Contributing Jobs to Our City's Economy – Downtown is one of our community's largest economic generators. With the addition of nearly three million square feet of occupied office, service, and retail growth, the Plan will expand our City's wealth by adding a diverse range of jobs and business opportunities for all generations

--Respecting Adjacent Districts – The proposed Plan values the histories and the futures of the neighborhoods and institutions which flank Downtown. It supports their continued health by creating a vigorous urban core contributing to the long term viability of these neighborhoods and institutions.

Morgan noted that there are some minor map revisions that will need to be made before this amendment proceeds to the City Council.

Esseks noted the mention of the benefit of jobs downtown. For what other reasons do we think people living in the far northeast, southeast and southwest areas of the city will support the Downtown program. Morgan suggested that the Downtown does generate both economic wealth as well as agricultural and social wealth that helps all of us across the community. Everyone in the community benefits in the long term by the activities that do occur Downtown, just like the activities that occur in suburban areas.

2. Cecil Steward, 125 N. 11th Street, testified in support. He was Co-chairman of the Downtown Action Team (DAT) that had been appointed by the Mayor and charged to oversee the development of this Master Plan. This proposal represents a community-made perspective of the future of Lincoln. It is exciting, innovative and relevant to both the history of Lincoln and the context of our place and our future. It is challenging, but it is doable, and, it is eminently timely – and urgent – that we begin the hard work of implementation now.

The DAT was comprised of twenty outstanding citizens who represent a broad cross-section of downtown and community stakeholders (the list of the DAT membership was submitted). The DAT conducted four community workshops plus numerous stakeholder meetings and focus groups.

As a key component of the Comprehensive Plan, the Downtown Master Plan will begin to have an impact on the entire plan and, in turn, all other aspects of the Comprehensive Plan will begin to influence the implementation strategies for the Downtown Plan. This is the plan for economic growth for Lincoln. This will make Lincoln a force for equity in the region. For those who already take pride in and want even more features of Lincoln's clean, distinctive, and

workable urban characteristics, this is your plan. This is a plan of more choices for housing and urban village walkable lifestyles in contrast to the auto-dominated suburban development at the edge. This plan is a perspective for balanced growth, a sustainable strong core, tremendous development and economic opportunity, and a bright, distinctive future for the city of Lincoln.

3. The owner of **A Novel Idea Book Store**, 118 North 14th Street, testified, indicating that she has contacted the Planning Department and has been assured that the building in which her bookstore is located will be designated “existing retail” as opposed to “new retail”. The retail component of this plan is very important to be implemented in order to provide for a cohesive retail environment. Other cities have a central retail district. Through this plan we have the opportunity to create such an environment in Downtown Lincoln.

4. Ed Swotek, 5340 W. McKelvie Road, Sr. Vice-President in charge of investor relations and corporate strategic planning with Tier One Bank and member of the DAT, testified in support. Part of his responsibility at Tier One is to help in the development of new offices in the growth of their company. Tier One has made quite a significant investment at 12th & N, and chose Downtown Lincoln as its headquarters almost a century ago. Tier One continues to choose Downtown Lincoln as its corporate headquarters because this is the heart of the community. When putting together the Tier One corporate strategic plan, they begin with a team in drafting a vision, then go to a concept, then a plan and then implementation. Downtown Lincoln is no different. The Master Plan is a vision for an even greater Downtown. Like a business, Downtown must position itself to be competitive, to stimulate investment and to encourage development. This visionary plan provides that private sector with confidence and insurance of a long term focus on Downtown. This signals to Lincoln and those throughout the country of the continued commitment to Downtown and support for its future vitality. Lincoln is changing, and we have to be adaptable to that change and visionary to continue to look forward for a strong Downtown. This plan is a vision – not a specific blueprint – with a lot of flexibility. It provides an essential framework, structure and focus on where we want to position ourselves as a progressive Downtown for the future. The Downtown is a heart of the community. It is a window to the soul of a city. It is also a city’s front door. To continue to grow and be vibrant you have to have a healthy heart, and that is important for Downtown. The Planning Commission’s support of Downtown over the last several years has been outstanding and he urged the Commission to move this Downtown Master Plan forward. It is Lincoln’s future.

5. Michele Waite, Assistant to Chancellor Perlman of UNL, testified in strong support. She also served as a member of the DAT. She has worked in public policy for many, many years involving consensus building and negotiating, and this process has been one of the most inclusive she has ever been involved with. She advised that UNL is also undertaking a similar process in updating their master plan. Crandall-Arambula and various city staff have worked hard to integrate many of UNL’s concepts and desires in this plan. It has been a true partnership. This plan and the UNL plan share a common vision which creates a safe, welcoming and attractive environment.

Specifically, UNL finds that the civic square and the many pedestrian elements are very attractive. The back-in parking concept is acceptable and UNL has offered to be used as a test for this concept. They are continuing to discuss certain areas of the plan as it relates to R Street. This Master Plan and UNL have common goals: pedestrian safety, bicycle traffic, parking, and maintenance of green space. She also noted that the plan provides the flexibility needed to fine-tune certain areas.

Bills-Strand inquired whether there are other communities utilizing the back-in parking. Waite observed that there were several cities used as examples. It is a much more safe type of parking situation. The Chancellor was very intrigued and the University has offered to be used as a test area.

Esseks inquired whether there has been any discussion about the University using the proposed convention facility. Waite indicated that there has been such discussion. They are monitoring the situation; however, the University has made no commitment. The Athletic Department prides themselves into being self-supporting, so any additional debt would have to be taken into consideration.

6. Jeff Barron, Commercial Property Manager for **US Property**, testified in support. US Property recently moved Downtown after 35 years at a previous location, being now at 1320 P Street. Since moving Downtown, the Company has doubled in size. He suggested that the Downtown Master Plan is going to have a huge impact on his company's future as well as the future of Downtown.

7. Rick Krueger, appeared on his own behalf and submitted proposed amendments to the Master Plan. He stated that he is in favor of the back-in parking concept. He suggested that P Street should be made a two-way street to support the retail along that corridor.

Amendment #1: On behalf of AV L.L.C., Krueger requested that its properties be removed from the "housing" framework portion of this Plan. These properties are at the southwest corner of 18th & Q Streets and on the south side of P Street between 18th and 19th Streets (p.31). Krueger would prefer that these properties not be shown as future urban housing on the maps in the plan.

Amendment #2: Krueger requested that the following affirmative statement be inserted on page 12 of the Implementation Program: "For purposes of site assembly, the City of Lincoln will not use its powers of eminent domain to transfer property from one private owner to another".

Amendment #3: Krueger requested that the items in the Master Plan that anticipate and call for additional design standards and plan review be deleted. These are primarily on page 13 of the Implementation Program and the whole of the Design Guidelines section. He understands that the design guidelines are not coming forward at this time.

8. Bruce Bohrer, Lincoln Chamber of Commerce, advised that the Chamber of Commerce Steering Committee has passed a resolution in support. To the extent that the plan identifies the location for an events center, the Chamber believes such a designation should wait until the Mayor's Task Force has completed their work.

Opposition

1. Richard Esquivel, 733 W. Cuming, testified in opposition. He attended one of the meetings and left with questions which have not yet been answered:

--How is Lincoln and the county going to finance this project?

--The plan proposes to remove Douglas Theaters at 13 and P and make that a green area. If it is a green area owned by the city, how much tax revenue will be lost?

--There is to be a hotel or parking garage where Starship 9 is now located. How are we going to finance it?

--As far as the potential for a Convention Center, he pointed out that just this past week, the newspaper reported that Omaha's convention center has not drawn the conventions they were hoping for, so how will Lincoln benefit by having a convention center?

--The development downtown should be private. If tax incentives are granted, how much tax revenue will the city lose over a period of time? Will they grant tax incentives to other areas?

--How much is this going to cost the taxpayers?

Staff questions

Bills-Strand commented that she was surprised to see the primary site for the convention center being identified as the Haymarket. She also notes that it suggests modifying Pershing to a festival space area but does not address what we're going to do with Pershing. She believes the Plan should be modified to allow the other study group to come forward. There is some question as to whether the Post Office can move. She asked whether staff would be comfortable leaving that out at this point and waiting for the study. Morgan stated that the staff is more comfortable going forward with what has been shown now for some time. This study was delayed until the CSL study was completed. This is conceptual. Our preference is to retain what is in the Plan with the recognition that as other events unfold we may make modifications. In terms of public dialogue, we believe it is reasonable to move forward. With regard to Pershing, the Plan does talk about it as a possible re-use site for the Library, and the Library Board voted in favor of that. This is at least a good starting point. For right now, what is in the Plan is perfectly acceptable and can move ahead. Changes can be made in the future.

Bills-Strand asked whether Krueger's proposed Amendment #1 is acceptable. Morgan stated that they do need to work out the potential use and he would be comfortable making that change.

Bills-Strand inquired about changes to the CIP to implement this Plan, noting that currently, the CIP projects are mainly Antelope Valley and now we're going to have to fight for the funding we have. We are 200 million dollars behind in infrastructure for the rest of the community outside of Antelope Valley and Downtown. Downtown does not pay impact fees. What happens to all of the development that is trying to get things done to continue growth to help pay for all of this? Where are those impact fees going to be spent? Rick Peo of the City Law Department advised that impact fees have to be spent in the benefit district from which the impact fee is required. The city is set up in zones of benefit districts. It can be spent on projects in that district where the impact fee was paid. Impact fees are not spent in the Downtown. Obviously, the CIP is a matter of priority. Projects are going to come and go as to their priority but obviously, if there is lack of funding, it becomes difficult to do the prioritization for funding. Bills-Strand inquired whether approving this Plan makes a commitment to transfer dollars in the CIP away from other areas to the Downtown. Peo advised that this is only a subarea plan in the Comprehensive Plan. The Comprehensive Plan is not a binding document. The City Council is not bound by the Comprehensive Plan in making decisions on the CIP. The Comprehensive Plan is a guide. It does not mandate anything.

With regard to the Krueger amendment regarding eminent domain authority, Peo does not believe that belongs in the plan at all. Eminent domain is a state law. It might be a policy decision by the administration as to how to use the power but it should not be put in this plan as a binding statement.

Esseks inquired about the advantage of adopting this plan now if it does not bind the future decision makers. Morgan agreed that this proposed Plan, as well as the Comprehensive Plan, are not binding in the sense that "you have to do it". It is not forcing anyone to do anything. It basically sets forth things we would like to accomplish. It begins to identify issues. This simply gives us a framework within which to work. It behooves us to look to the future. There is nothing binding. It gives direction and guidance.

Carlson inquired about inserting a bullet point that mentions the ongoing work of the existing committee on the events center. Morgan stated that he is not that familiar with what that committee is doing and that would be a decision of the Commission; however, Morgan believes that the flexibility is built into the Plan.

Morgan agreed that the issue of eminent domain is a broad policy issue for the city to deal with which should not be in the Master Plan.

Morgan also pointed out that Page 19 refers to making every effort to grandfather any existing use. We want to be respectful of those who invest in Downtown. There will be an attempt to keep any business in place that wants to remain there and operational.

ACTION BY PLANNING COMMISSION:

August 31, 2005

Larson moved approval, as proposed, seconded by Pearson.

Bills-Strand moved to amend:

--adopting Amendment #1 requested by Rick Krueger regarding the property at the southwest corner of 18th & Q Streets and on the south side of P Street between 18th and 19th Streets, designating the properties as office use; and

--to change the wording on page 38: ~~West-Haymarket~~ Several locations in the Downtown offers a significant opportunity to provide arena, convention and headquarters hotel facilities. A Mayor's Task Force study will be completed to provide guidance on the exact location.

The motion to amend was seconded by Sunderman.

Bills-Strand pointed out that there is a task force that is working hard and she does not want to tell them we have made a decision on the location. She understands this may be a wonderful location but it may be the most expensive location because the post office could be one of the biggest hurdles. She wants the task force to do their work.

Pearson noted that staff indicated that there were specific areas that needed to be changed on the maps so she does not feel comfortable making a specific change for Mr. Krueger and not including the Novel Idea Book Store. She believes that staff will take any inaccuracies into consideration.

Pearson moved to split the question, seconded by Esseks and carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand voting 'yes'.

Motion to amend to incorporate Krueger Amendment #1: Bills-Strand stated that she was not intending to leave anyone out. The Novel Idea Book Store owner stated that she was told her issue was being taken care of and that is why she did not include that. Marvin Krout, Director of Planning, suggested that both amendments are acceptable and possibly the Novel Idea Book Store should be a separate amendment.

Motion to amend to incorporate Krueger Amendment #1, designating office use as opposed to housing, carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand voting 'yes'.

Motion to amend, changing the language concerning the Convention, Arena and Conference Center Framework as set forth above carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand voting 'yes'.

Pearson moved to amend the designation on the Novel Idea Book Store property from "new retail" to "existing retail", seconded by Carroll. Pearson stated that she is real hesitant to do this because she thought the whole purpose was that it was a flexible document and that it could be edited and be useful, and now we're talking about tiny parcels and very specific uses. She is hoping that other businesses who are not here today who have similar problems will come forward and be addressed equitably as well. Motion to amend carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand voting 'yes'.

Discussion on the main motion for approval, as amended:

Bills-Strand reiterated her concern for funding and she hopes we find a way to step up funding for the CIP.

Carroll expressed gratitude to the DAT, staff and consultants. He believes it is a great plan and great vision. It helps property owners downtown know where the city wants to go and he believes we will see more private development because of it.

Larson commented that looking around the country, virtually every good city has a good downtown and every rotten city has a rotten downtown. Lincoln has a special responsibility because we are the Capital City and visitors from throughout the state love to come to Downtown Lincoln. We need to make sure they continue to have pride in their Capital City.

Sunderman commented that as the city grows, the importance of a healthy downtown grows with it. We need a solid center.

Main motion for approval, as amended, carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 05008,
WEST 'O' STREET REDEVELOPMENT PLAN.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 31, 2005

Members present: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Proponents

1. Darl Naumann, City and County Economic Development Director, presented the West O Street Redevelopment Plan which provides guiding principles for development on West "O" Street, stretching from the Harris Overpass to the new construction going on the west side of "O" Street, i.e. Lincoln Poultry and Nebraska Machinery.

There was no testimony in opposition.

Carlson noted that the Planning Commission did receive an extensive briefing on the Redevelopment Plan.

There was no testimony in opposition.

The Clerk read the two amendments requested by staff into the record:

Amendment #1: Under the subheading, "Redevelopment Activities: Public Improvements - Public Utilities" on page 23, add the following paragraph:

"West O Street Storm Drain System:

1. Provide positive grades for blocked outlets and open swales located south of West O Street.
2. Look for opportunities with landscaping, beautification, streetscaping and trail improvements to include water quality features where possible to provide for multiple benefits and functions."

Amendment #2: (Page 21) "Airport Sub-Area Study" be changed to "Airport West Subarea Plan".

ACTION BY PLANNING COMMISSION:

August 31, 2005

Larson moved a finding of conformance with the Comprehensive Plan, with the amendments recommended by staff, seconded by Carroll and carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05056
FROM AG AGRICULTURAL DISTRICT
TO AGR AGRICULTURAL RESIDENTIAL DISTRICT
and
SPECIAL PERMIT NO. 05041,
CARDWELL RESERVE COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S.W. 12TH STREET AND W. DENTON ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 31, 2005

Members present: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand.

Staff recommendation: Approval of the change of zone and conditional approval of the community unit plan.

Ex Parte Communications: None.

Proponents

1. Brian Carstens presented the application on behalf of the applicants for a change of zone to AGR on a quarter section located at S.W. 12th and W. Denton Road. The site is shown as low density urban residential in the Comprehensive Plan. Therefore, the change of zone is in conformance with the Comprehensive Plan. This application represents a "spin" on the build-through regulations, i.e. instead of allowing for future lot splits, this community unit plan provides 1/3 acre lots today, with a community septic system and each lot will have its own well. The well report was favorable. There will be sidewalks, street trees and street lights on the areas which are being developed at this point. The area is about 50% located in the floodplain of Cardwell Branch that is now being revised by the NRD. All of the lots will be out of that area. There will not be any filling in the floodplain. The large tree mass will be preserved.

Carstens advised that the only issue is the applicant's request that street trees not be required along S.W. 12th and West Denton Road at this time. It will be years before the city is ever out there. The Parks Department is requesting a cash contribution at this time; however, Carstens believes it will be 15 years before the trees are planted. He requested an amendment to Condition #1 such that the street trees along S.W. 12th and W. Denton Road

are waived until the final platting and urbanization of these outlots. Carstens does not believe that giving the city money for street trees for 15 years in the future is warranted. The applicant would have no problem putting the street trees in when the outlot is developed in the future.

Esseks noted that there are three different concentrations of dwelling units. Will each have their own community septic system? Carstens answered no – that there will be a central packaging plant, administered by the homeowners association. They will contract with a company out of Omaha that manages those areas. Esseks inquired about the determination of safety and effectiveness. Carstens advised that it would be monitored by DEQ pursuant to permits that are required. Esseks inquired whether this development will have the same septic system as the adjoining properties. Carstens answered in the affirmative, advising that Foreman Ridge has 28 lots with the exact same system. Immediately to the west is Cardwell Woods with a lagoon system. Carstens did not know how frequent the DEQ comes out the monitor.

Carroll wondered whether it would be acceptable to the applicant to “show” the street trees on the plan but waive the implementation until the final platting. Carstens agreed. This would leave condition #5.1.1.30 in place, which the applicant had requested be deleted.

Bills-Strand noted that the Health Department made mention that Lots 1 and 2 of Block 8 are going to be downsized to approximately 1-acre each. Carstens explained that there are two existing houses which will be located on 3-acre lots to take care of this situation.

There was no testimony in opposition.

Staff questions

Carroll asked staff to address the applicant’s proposed amendments regarding the street trees. Mike DeKalb of Planning staff stated that normally, the trees would be required to be shown by species and location. The original request from Parks was to post a bond. Mark Canney with the Parks Department has been in discussions with the applicant about the compromise, but they have not reached agreement yet. Lacking a compromise, staff is not in a position to agree with the proposed amendments.

Pearson inquired about the long term plan for Coddington. Right now it comes down and stops at W. Denton Road and she notices that we are not extending it, but that we probably have an opportunity to do so at this point. DeKalb responded, stating that all of the reviewing agencies, recognizing the environmental features and development ½ mile further, indicated it was not appropriate to attempt to put Coddington all the way through. The outlot provides the access point for this plat to the west and for the existing farm further west, if they choose to develop. There is a requirement to show the access point at the quarter mile line.

Sunderman inquired whether any of the adjoining lots on West Denton Road and S.W. 12th Street have street trees. DeKalb advised that there was a provision that those street trees

could be waived. In this case, all of the parcels are full urban sized lots and that is why the staff is requiring that the street trees be shown.

Esseks inquired as to how the stormwater detention and floodplain issues are being dealt with. DeKalb pointed out that the staff recommendation denies the waiver of stormwater runoff. Therefore, the issue is covered in the conditions of approval. Relative to the floodplain, the condition requires that adjustments be made in accordance with the Cardwell Creek study as it comes forward.

Response by the Applicant

Carstens pointed out that they are planting the street trees for the lots that are being created today. The request is to waive or defer planting the street trees on the arterial streets because they are not developing along those streets at this time. Parks wants the cash contribution now and they'll put them in when the streets are widened. The proposed amendment provides that the street trees will be planted when the outlots are further developed and/or subdivided or urbanized. The waiver would only apply to this development at this time. Pearson wondered whether the street trees could be planted out of the area of the right-of-way. Carstens advised that the subdivision ordinance requires that the street tree be planted in the right-of-way.

Larson inquired how there would be a guarantee that the street trees would be planted in the future. Carstens believes the requirement would remain as part of the record on the community unit plan and would be provided for in the subdivision agreement. Whoever develops the big outlot will be responsible for planting the trees. A large portion of the floodplain will be owned by the homeowners association, but the applicant will keep the future developable area.

CHANGE OF ZONE NO. 05056

ACTION BY PLANNING COMMISSION:

August 31, 2005

Pearson moved approval, seconded by Carroll and carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 05041

ACTION BY PLANNING COMMISSION:

August 31, 2005

Pearson moved to approve the staff recommendation of conditional approval, seconded by Esseks.

Carroll moved to amend to include the amendment to Condition #1 requested by the applicant, seconded by Sunderman.

Carroll does not believe it is clear where the trees will be located. He does not believe they should have to pay for the trees now. When the area is urbanized, the owner will have to put the trees in and he believes that is specific enough.

Sunderman commented that this is the first application he has seen come through with the 1/3 acre size lots in the beginning and he believes the street tree requirement penalizes them.

Esseks commented that he is generally in favor of impact fees, which are supposed to be spent in 5-8 years, so he believes the time period justifies the exemption of the street trees.

Pearson expressed her support for putting the money in escrow. She believes the association or future owners or developers will be saddled with doing the entire W. Denton Road and SW 12th Street under a future plat and she is not sure how fair that is. She is opposed to the amendment.

Larson believes it is unfair for them to have to put up the money now for something that won't happen for 15 years.

Motion to amend carried 8-1: Esseks, Carroll, Taylor, Larson, Sunderman, Krieser, Carlson and Bills-Strand voting 'yes'; Pearson voting 'no'.

Main motion for conditional approval, with the amendment to Condition #1 requested by the applicant, carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council.

*** Break ***

ANNEXATION NO. 05013

and

CHANGE OF ZONE NO. 05054,

PRAIRIE VILLAGE NORTH PLANNED UNIT DEVELOPMENT,

ON PROPERTY GENERALLY LOCATED

AT N. 84TH STREET AND ADAMS STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 31, 2005

Members present: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; and conditional approval of the planned unit development.

Ex Parte Communications:

Larson disclosed that he has visited with the Wal-Mart representatives and some people who are in opposition, particularly B&R Stores.

Pearson disclosed that she has visited with and listened to a lot of people, but the only new information was from Peter Katt, who will be discussing a change in the surrounding Office zoning on the southeast corner of the intersection.

Esseks disclosed that he had a very brief conversation with Steve Champoux, who said they have been trying to get another grocery store besides Wal-Mart to locate on this property without success.

Greg Czaplewski of Planning staff submitted 27 e-mail messages in support of Wal-Mart, and 6 letters in opposition to Wal-Mart.

Czaplewski also submitted and explained proposed revisions to the conditions of approval, which have been agreed upon by the staff and the developer (***Editorial Note: The proposed amendment is listed first, followed by an explanation and any discussion***):

- 1.2 Revise the land use table: “* 50,000 square feet of office space north of Adams is dependent upon the following: “. Revise note 4 in the land use table: “50,000 square feet of the 100,000 square feet of total office space within the PUD must be located on the second floor or above of a building.”

The amendment to Condition #1.2 clarifies some language on the site plan and specifies that there is 50,000 square feet of office space approved for the north side of Adams Street and 100,000 square feet approved for the south side of Adams Street. The 50,000 square feet north of Adams is contingent upon criteria which generally follows some of the criteria taken from the Comprehensive Plan. There is also a provision added that 50,000 square feet of the total office space within the PUD has to be located on the 2nd floor or above to get some vertical use of the space rather than spreading it all out in a single story building.

- 1.3 Revise the southwest corner of the development north of Adams Street to show R-5 uses at the corner and to show B-2 uses along Windmill Drive south of Adams.

The proposed amendment to Condition #1.3 refers to the south side of Adams Street on the south side of the PUD on Windmill Ridge. Rather than the O-3 buffer all the way around B-2, they would be doing B-2 and O-3 along 87th Street, breaking it where Wagon Drive comes through.

- 1.5 Revise the PUD calculations in site specific note 6 using the acreage area stated in the legal description for the R-5 zoned areas. Show the total number of allowable units is 2,057, the total number of approved units is 1,285,685, the total number of allocated units is 1,185, and the total number of available unassigned units is 100, plus an additional 400 available unassigned units shall be available provided commercial square footage is reduced to accomplish an equivalent pm peak trip reduction.

The proposed amendment to Condition #1.5 relates to the number of dwelling units they have available. The acreage that they have would allow 2,057 dwelling units. The applicant has requested to allocate 1,185 of those units and initially, the applicant wanted to retain the additional 972 units for future. In the report, staff suggested that that many units would significantly impact the development, with traffic generation concerns, so the staff has suggested that 100 unassigned units would be appropriate. With this change to that condition, the staff has also agreed to an additional 400 dwelling units, provided that they reduce the commercial area by an amount necessary to account for trips generated by those additional 400 units. This is the attempt to stay within the trip numbers in the traffic study.

- 1.10 Revise the location for the Future Dedicated Neighborhood Park to ~~provide street frontage to~~ the satisfaction of the Parks and Recreation Department.

The proposed amendment to Condition #1.10 removes the language to provide street frontage for future dedicated neighborhood park and leave that issue to be resolved between the developer and Parks Department.

- 1.11 Add a note to the plans stating any relocation of existing facilities will be at owner/developer's expense except that costs for relocating LES facilities in the expanded 84th Street right-of-way shall be addressed in the annexation agreement.
- 1.12 Add a note to the plans stating any construction or grade changes in LES transmission line easement corridors are subject to LES approval and must be in accordance with LES design and safety standards and delete site specific note 25.

The amendments to Condition #1.11 and #1.12 recognize that the 84th Street proposal to expand to six lanes includes moving an LES transmission line. That would be better addressed in an annexation agreement.

2. This approval permits 1, ~~285~~685 dwelling units and 585,000 square feet of commercial, retail, and office space (which is generally allocated as 285,000 south of Adams Street; 300,000 north of Adams Street, 50,000 of which is contingent upon meeting incentive criteria); and waivers to allow the submittal and approval of detailed grading, paving profile, paving cross section, storm water detention, storm sewer calculation, lot layout, street curve data, nonstandard cul-de-sac geometry for the cul-de-sac located on the west side of North 87th Street in the office park area, and any other required information not submitted with this proposal with future administrative amendments; allow block lengths to exceed 1,320 feet for blocks abutting Murdock Trail, Stevens Creek, and the west side of North 87th Street; allow sanitary sewer to flow opposite street grade provided depth does not exceed 15 feet and length does not exceed 500 feet; allow nonstandard private roadway cross sections west of North 87th Street; allow parking in the required side yard within B-2 and O-3 zoning; allow joint parking access across lot lines and between pad sites zoned B-2 and O-3 to meet minimum parking requirements, except south of Adams Street; allow revised lot area requirements within R-3, B-2, and O-3 zoning as shown; allow additional uses within O-3 zoning as shown, provided the sale of

alcohol meets the conditions of LMC §27.31.040, and further provided restaurants and the sale of alcohol are not permitted south of Adams Street; increasing the height for multiple-family uses to 45 feet.

Condition #2 outlines everything approved. With the addition of the 400 units, the proposal now approves 1,685 dwelling units. Language has been added that the approval generally allocates 285,000 square feet to the south and 300,000 square feet to the north with the additional 50,000 on the north. The Planning Director does have authority to make administrative amendments to reallocate the square footage, if necessary, in the future.

4.4 ~~Fill Permit #04001 shall be rescinded.~~ (Deleted)

Condition #4.4 is deleted because the goal is accomplished by Condition #1.8, as follows:

- 1.8 Revise the site plan, in the area of Outlot A, to indicate site specific note 21 (future development if floodplain changes) applies to all development shown east of the 100-year flood prone area.

Pearson asked for clarification of the number of dwelling units being approved in Condition #1.5. Czaplewski explained that the 1,685 is 500 more than they are allocated (1,185). We have given them an additional 100 to allocate at some point in the future through an administrative amendment, and then 400 to allocate again by administrative amendment, but those are only available if the trips they generate are taken out of the trips generated by the commercial through a reduction in the commercial square footage.

Proponents

1. Peter Katt appeared on behalf of **Prairie Homes**. He referred to the previous project, where the residential component and the majority of the commercial was liked by everyone but some of it did not comply with the Comprehensive Plan and the project was turned down. While this project is similar, there are some very significant key differences, the primary difference being that this project is fully consistent with the Comprehensive Plan. Some of the other general concerns were that the community did not want a community center here but a neighborhood center; that if there was an employment center, it needed to have high quality employment; and as to the land use planning implications, the adjacency of the large big box Wal-Mart adjacent to the cemetery and golf course and close to the church and school was not appropriate. Those specific concerns will be addressed as a part of this presentation.

Katt pointed out that the primary component of this proposal is residential. The residential component provides a high mix of available residential uses and types. The first phase will be done by Prairie Homes, which is ready to go under contract as soon as this proposal is approved. The component of the residential that is changed from the last project is that it now includes an area that was formerly commercial/multi-family. The O-3 area will be converted to residential in accordance with the staff recommendation and the applicant agrees.

The staff conditions do not allow any development in the floodplain and the applicant will go forward with a study area. If they can come up with a good solution to maximize the community's value received from that area, the applicant will bring forward an amendment to the plan to integrate the neighborhood park, the existing Murdock Trail and the city's plans for a future trail along Stevens Creek.

With regard to the commercial area, Katt advised that the commercial on the south side across from the church will now be zoned B-2 and O-3. They would contemplate the entire parcel being B-2; however, the applicant's commitment to the church is to provide them with a reasonable separation between any retail uses or detrimental uses to the church and school and the applicant proposes to do that with the O-3 strip. The applicant agrees with the recommended amendments by staff.

With regard to the commercial on the north side, this area has been substantially revised and the big box retail (proposed Wal-Mart) has been moved clear to the north side of the development, away from the intersection of 84th and Adams. Katt showed an elevation of the location of the retail store, depicting that it will not be able to be seen from the intersection of 87th and Adams due to terrain. The big box retail is now 1/4 mile north of the cemetery and the golf course.

Katt advised that there is one point of disagreement with staff which has to do with a component the applicant thought was good. The staff questions whether or not the additional square footage is appropriate in the context of a neighborhood center size question. The corporate employment park would provide an opportunity in the community for a business to locate. That was the concept. We thought it provided a nice transition from the higher density residential through and into the neighborhood center, and provided a nice transition into the neighborhood to the east. The staff does not believe that the Comprehensive Plan allows that square footage. The applicant would like some additional square footage allocated exclusively for the purpose of the corporate employment park.

Katt posed the question to the Commission: Why should you approve this? There is really no dispute about the residential. The question is about a supercenter. Wal-Mart was ready to build yesterday. No other company is ready, willing and able to make this investment today in northeast Lincoln. Grocery store retailers indicated that it will be at least five years before they are willing to make the investment—there are not enough rooftops. Remember that Wal-Mart is a catalyst to other investment and development in an area. Here we have private money willing to invest and revitalize that area and provide other opportunities to the community. Hotels, restaurants, doctors, and veterinarians have all called and want to move next door to Wal-Mart. Wal-Mart brings them the needed visibility and exposure for those businesses.

Esseks inquired as to the size of the proposed Wal-Mart. Katt indicated that under his client's arrangement with Wal-Mart, they have the ability to build up to 230,000 square feet. The additional 50,000 square feet is for adjoining businesses.

Taylor asked for clarification of the exact location of the Wal-Mart building and the distance from the school and church. Katt showed the location on the map, stating that Wal-Mart site is about ½ mile from the church and school. The Wal-Mart building itself is probably 3/8 mile from the church.

2. Tom Huston, 233 S. 13th Street, Suite 1900, appeared on behalf **Wal-Mart Stores, Inc.**, in support of the PUD as a neighborhood center. He introduced representatives of Wal-Mart Stores and submitted written information about Wal-Mart. This is the third potential location for a new Wal-Mart store on N. 84th Street. Wal-Mart recognized that it needed an additional location to serve its existing customers in Lincoln. Originally, Wal-Mart had selected the site by looking at the Comprehensive Plan, which reflects that the southeast corner of 84th and Adams is designated as commercial. They filed an application in January, 2005, met with staff, and in March, 2005, met with the Faith Lutheran Church and School committee, who were concerned about the potential impact upon their school and church. At that time, Wal-Mart agreed not to fight with the school, and agreed to look on the north side of Adams. The northeast corner was the second site and a change from neighborhood center to community center was not approved. Thus, Wal-Mart has agreed to a location ½ north of 84th & Adams adjacent to the embankment for the Murdock Trail.

Huston noted that there is a petition on file in support from 2,592 Wal-Mart customers.

Beyond the land use issues, Huston pointed out that the proposed PUD complies with the Comprehensive Plan. If that was the simple question, it would be a very simple answer; however, a lot of times these questions go beyond the land use issues and look to the users. Wal-Mart has been a corporate citizen in this community for over 15 years, with three locations including the Wal-Mart and Sam's Club on N. 27th and the Wal-Mart on Hwy 2. Wal-Mart has made a huge investment in the City, currently employing over 1200 people. He submitted a map showing the grocery store site locations within Lincoln, indicating that there are huge gaps. Wal-Mart recognized the huge gaps in the northeast area and wants to fill that gap in northeast Lincoln. This new location would generate \$300,000 in real estate and personal property taxes; an additional one million dollars in sales tax; and 450 new jobs.

Huston reiterated that this is a 15-year member of our community that wants to expand and invest more dollars in our community; the staff is telling us this is a plan that makes sense and that it is consistent with the Comprehensive Plan.

Approximately 30 associates and managers employed by Wal-Mart stood in the audience in support.

Carlson inquired as to the typical market area radius for a 225,000 square foot store of this type. **Cassandra Bozeman, a Wal-Mart representative**, stated that it absolutely depends on the demographics. Wal-Mart has a store at 27th and Superior that is overburdened and their customers want another store. We need to relieve that store and add new market share. She stated that the average customer distance is no more than 5 miles.

Esseks noted that in the national debate on Wal-Mart, a frequent criticism is the lack of benefits for the staff. What kind of benefits are there for a part-time employee? Huston pointed out that of the 450 jobs that this store could generate, 75% would be full-time position.

Ryan Horner, a Wal-Mart representative, stated that full-time and part-time associates are eligible for full benefit packages. The health care packages provide a number of different options, starting at \$40/individual to \$150/family, with no limit on the number of dependents and no limit as to the dollar amount of benefits. There is a six-month waiting period for full-time associates and a two-year waiting period for part-time associates. Full-time is considered 34 hours a week. Nationwide, a majority of the Wal-Mart associates are full-time. After the two-year waiting period, the part-time associate qualifies for family as well as individual benefits.

Pearson inquired whether Wal-Mart has a contract with this developer. Huston indicated that yes, the site is under contract.

Bozeman stated that their original contract was on the south side of Adams Street, and they voluntarily withdrew from that location. They then moved to the north side of the street, and have now moved further north and have signed another contract with the developer.

3. Bill Austin, 301 S. 13th Street, testified in support on behalf of the **Lancaster County Agricultural Society**, which owns the property immediately to the north. The Ag Society believes that the proposed big box development located to the south of the Events Center at 84th & Havelock would be a good neighbor and is consistent with the concept that this area should generally be recognized as commercial in nature. The Ag Society understands that this proposal contemplates the lowering of the Murdock Trail and the Ag Society agrees with this concept. It is their hope that there may be opportunity to cooperate and create synergies in the road network and traffic patterns that would serve both the Events Center and the proposed development.

4. Eldon Peterson testified in support. He suggested that Lincoln has two pastimes. One of them is football. The other is bashing Wal-Mart. Why is it that people need to bash Wal-Mart? He does not believe it is all true. Wal-Mart gave one million dollars to the Hurricane effort. He needs Wal-Mart. He lives at 1030 Daybreak Circle, which is the equivalent of 85th Street. He has been told for years that there is going to be a grocery store at 84th & Holdrege. Nothing seems to happen. He also understands that there is going to be a new grocery store on the southeast corner of 48th and O Streets. How badly do they need a grocery store there when Super Saver is less than one block away? There is another grocery store just beyond Super Saver, but we can't seem to get one serving N. 84th Street. He hopes people stop bashing Wal-Mart. He agrees that there is a need for a third store.

5. Richard Esquivel, 733 W. Cuming, testified in support due to the traffic congestion at Wal-Mart's 27th & Superior Street location. He was postmaster of Beatrice for 12 years when Wal-Mart put a store in Beatrice. That Wal-Mart store drew customers from southeast

Nebraska, northwest Kansas, southwest Nebraska and south Lincoln. As far as a corporate partner, the Wal-Mart in Beatrice has helped financially with the Veterans Memorial Garden plus other special projects.

Opposition

1. Doug Cunningham, 1114 Rockhurst Drive, testified in opposition. Personally, he does not believe that this proposal fits in with the intention of the Comprehensive Plan for the retail development in that area. He highlighted some research that he has done on Wal-Mart which shows that the rural, outstate Nebraska supercenters grew at a slower pace than they would have grown had they not been supercenters.

As far as creating 450 new jobs, Cunningham suggested that is not the way it works. You are just selling in a different store. Every one of these communities had the same development around their Wal-Mart but their sales tax revenues did not show for it. If you believe in the efficiencies of scale, when you get that large of a store, you will sell the same products with fewer number of employees. In Atlanta, one out of every four Wal-Mart employees had a child on Medicaid.

2. Susan Schulte, 8120 Whitney Court, at 84th & Adams, between Adams and Leighton, member of Faith Lutheran Church, testified in opposition. She has nothing against Wal-Mart. It is still too close to the church and the school. She submitted nine signatures in opposition. The proposed Wal-Mart is too close and too big. She can access another Wal-Mart 15 minutes either way from her home. Her 18-year-old daughter is employed at Russ's Market at 70th & Van Dorn. Russ's Market helps her daughter with school expenses as a benefit. With the Wal-Mart located next to the trail, she will not use the walking trail anymore because she will be afraid. The traffic is a concern. She cannot make a left hand turn on 84th & Leighton.

3. Joy Wilder, 140 E. Cherrywood Drive, President of Maple Village/Wedgewood Neighborhood Association, located at the southwest corner of 84th and O Streets, testified in opposition. She is concerned about the traffic hazards with the proposed Wal-Mart. She is also concerned because she believes the Wal-Mart store is too large for that location. She has also heard a rumor of a fourth Wal-Mart in southwest Lincoln. She wants competition of other grocery stores so that she has a choice. There are safety considerations for the church and school. She is also surprised that the Events Center is in favor of this proposal. There is no way she can get past Wal-Mart to get to the Events Center because of the traffic. She recently visited the optical department at the south Wal-Mart Store and she was unable to get her lenses and frames there. She does not believe an optician will locate close to Wal-Mart as long as Wal-Mart has an optical department. A lot of the smaller businesses will not go there if there is a Wal-Mart.

4. Gary Floyd, 8900 Avon Lane, testified in opposition to the Wal-Mart supercenter. It would be nice to see a home improvement center and grocery store. He is under the impression that

this proposal was turned down the first two times because of the traffic. He suggested that with this proposal, the traffic pattern has not changed. This new proposal has not done anything to address that situation. He will not shop at Wal-Mart.

5. Tammy Spence, who owns a specialty store in Havelock called the Vickeridge, testified in opposition. She believes that two Wal-Marts is sufficient. How many of the little businesses will have to close down? She has been in Lincoln all her life. That area is growing and it is so busy you cannot get on and off Havelock Avenue on 84th. She does not believe there is room for a big box retail.

6. Jay Voigt, 7223 Shamrock Court, part of the management team at Russ's Market at 6300 Havelock Avenue, testified in opposition to this development in this area. He is specifically concerned for his own travel safety on 84th Street daily. Increased traffic congestion would lengthen his commute. He noted the B-2 designation on the south part of the development. What is to stop another big box retailer from going into that B-2 area? They have expanded the B-2 further to the south. He is concerned about the floodplain issues and the environmental impact of a large supercenter in this area. He is also concerned for the wetland designations that are in the area. He does not know what kind of impact this development will have on the Murdock Trail. Why not consider some moratorium to take a look at the environmental impact and the floodplain issues?

As an employee of Russ's Market, Voigt receives excellent benefits with health insurance for his family of five for \$96/month; he has tuition reimbursement for two of his children; and he receives 401K benefits. B&R has been a corporate citizen of Lincoln for many years and they do an excellent job of providing for their employees. His store is 30,000 square feet, employing 89 people. He believes Wal-Mart needs 800 employees to equal the number of jobs Russ's creates in a 30,000 sq. ft. store.

7. Pat Raybould, President of **B&R Stores** operating the Super Savers and Russ's Markets in Lincoln, testified in opposition. Russ's is an employee owned company which has been around for 42 years. The decisions made today will impact their associates, their jobs and ultimately the well-being of this community. B&R Stores is a local retailer that is trying to protect its market share. They want to continue to provide the best pricing and the best value. B&R Stores care about the community's livelihood and the ability to provide decent paying jobs and benefits. It is very difficult to get across 84th Street. We lost the Fleming Warehouse in Lincoln, an excellent employer. They had issues that caused their downfall but part of it had to do with the intense competition from Wal-Mart. In order to compete with Wal-Mart, the three largest grocery chains in Los Angeles had to get together and decided that they were going to lower their associates benefits, resulting in a serious strike with the associates losing out on benefits. There will be a loss of jobs and benefits in the long run.

Raybould stated that B&R was very serious about building a small neighborhood store in this area. They did survey work and found that the numbers were getting better and they were negotiating with the developer. B&R asked the survey company to re-calculate the numbers

with the Wal-Mart being located in this area and the numbers fell out. B&R was forced to pull out of the negotiations. If there was not a Wal-Mart coming anywhere near this area, the community would have seen a Russ's market in this neighborhood.

8. Jane Raybould, Vice-President of **B&R Stores**, testified in opposition and expressed appreciation for the previous action taken by the Commission denying the Wal-Mart application. Studies have shown that Wal-Mart is a bad employer and bad corporate citizen. She submitted a report produced by the National Education Association. B&R Stores did a petition drive on Saturday and she is proud of the 243 signatures collected in opposition. The Russ's market in Havelock collected more than 200 signatures in a few hours. The supercenters do twenty times the business that our Havelock store does and they get 100 times more customer traffic, and they only got 2000 signatures. She asked the community to join B&R Stores this Saturday in their own petition drive at Russ's and Super Savers and encouraged other merchants in the city to do the same.

B&R Stores cares deeply about their 1143 Lincoln associates because they are an employee-owned company. B&R Stores cares about the well-being of the entire community. Their revenue goes through the local businesses and banks and is not wired out of the local business area. If Wal-Mart is allowed another store, there will be more blighted areas. Raybould suggested that the Commission consider a moratorium of 18 months on the building of any new retail stores of 85,000 sq. ft. to do an environmental impact study.

Staff questions

Pearson inquired as to how much of the infrastructure costs for the development around the Wal-Mart facility is being paid with public funds and how much with private funds. Czaplewski could not answer the question. Part of that will be subject to the annexation agreement and he has not seen a draft of that yet.

Pearson wanted to know what the public cost would be on a typical development of this size. Are any of the roadways being funded with city funds? Dennis Bartels of Public Works informed the Commission that the city and developer are still negotiating the annexation agreement, but in principle, sewer and water would fall under the impact fee system. The infrastructure that the city is putting in is going to be the same cost whether it is all residential or all commercial. This developer would pay impact fees based on the established formulas in the impact fee ordinance. There is no significant impact on 84th and Adams Street and the improvements have been identified; however, those negotiations have not been completed. The developer might have to fund the arterial street improvements in the short term and the city would have to pay them back at some future time. The city would anticipate using the impact fees that this project might generate and direct them back toward repayment of improvements that might need to be constructed. The Comprehensive Plan has identified 84th Street as a potential six lane facility, with or without this development. The developer would pay for whatever would not be needed without this development.

Pearson does not believe the right-of-way is large enough for a six-lane south of Adams. Bartels agreed that it is tighter as you get closer to "O" Street, but there is quite a bit of right-of-way that exists. However, if it was centered with the cemetery, the improvements would have to be shifted to the east to get those lanes in.

Bills-Strand inquired as to the amount or rate of the impact fees that will be charged for each one of the stores and the residential area. Czaplewski did not know the formula, but they would all pay impact fees to help with the infrastructure.

Bills-Strand returned to the issue of the scope of the role of the Planning Commission. In the four years that she has been on the Commission, she has never been asked to approve a tenant, but to approve zoning and a plat. She does not believe the Planning Commission is being asked to do that today, nor is she assuming they are being asked to approve the Wal-Mart wage and benefit package. Rick Peo of the City Law Department agreed. This is a land use decision to be made with certain types of development and square footage to approve or disapprove. The Commission is not here to evaluate the merits of any particular tenant. The Planning Commission's role is to look at the zoning and the land use principles and whether this is an appropriate use of the land, regardless of who the tenant might be.

Esseks inquired as to the principal entrance for customers to the store. We have heard that Adams is going to be crowded with people turning into the retail area. Marvin Krout, Director of Planning, believes that is a question better asked of the traffic consultant who made estimations of where the traffic is going to be coming from. The assumption was that most of the traffic was going to be coming from the south onto 84th Street and then make a right turn onto 84th, and that lesser amounts would be coming southbound on 84th and going eastbound on Adams.

Esseks inquired whether Adams will be widened east of 84th Street. Krout indicated that it is not in the CIP but it is identified in the Comprehensive Plan for widening to 4+1 east of 84th Street, 2+1 to the west. As far as impact fees, Krout stated that the city is charging around \$2,000 per single family unit. He estimated about four to five million dollars for the commercial and three to four million dollars for the residential portion in impact fees for the roads, water and sewer.

Pearson inquired about the stormwater and environmental concerns, with the floodplain in the northeast corner and two wetlands that appear on the aerial photo. Bartels concurred that potential wetlands have been identified. This is a PUD, so the developer did not provide all the details we might expect on a preliminary plat. The detailed grading plans on this particular site have not been provided. The developers have submitted information to the Watershed Management Division as to what could be done if the Murdock Trail bridge were lowered. Watershed Management has not done a complete analysis, but the information submitted does show lowering the bridge, which raises the floodplain because you get more water through there faster, which is contrary to the ordinance. If they can prove that it is beneficial or can make the numbers work to reconstruct that trail bridge economically

and get out of the floodplain, then we have conversely potentially approved some of the area that is in the floodplain now. The developer/private landowners pay for the initial study. The NRD and Public Works would invest the time to review the study that is being submitted. Public Works is not conducting the study. He assumes that the developer would pay for the reconstruction that would be necessary if there was a benefit to their property.

Response by the Applicant

With regard to the watershed issues, Katt pointed out that the staff has proposed a condition which requires the developer to satisfy all of the standards that currently exist. The Stevens Creek Watershed Master Plan was recently adopted with goals and objectives about what we are going to do in that area, the goals being to preserve the channel stability, provide water quality enhancement opportunities and some changes in how the creek flows to make these places that we want to preserve function for their water purpose and be put to some productive uses. The developer is working on this. The estimated cost of the study is about \$25,000 to \$50,000. The Events Center is also interested in the possibility. They have discussed how to take their expansive floodplain on the Events Center and turn it into ballfields that could be connected to the trail to go back over to Mahoney to provide an economic opportunity in terms of meeting little league ballfield complex needs. Katt has scheduled a meeting with the landowners on the east bank of Stevens Creek to find out their interest of participating in this study. The city has already completed the 98th Street project study which identified a corridor for 98th Street and other improvements associated with crossing 98th Street over Stevens Creek with two massive bridges, showing 6 feet of fill on the Murdock Trail to the east of the creek.

Katt then responded to the issues raised by the opposition which pertain to Wal-Mart, its benefits and specific tenants. Katt suggested that in a lot of respects, that information is irrelevant. If we make a policy decision that all of our grocery stores or retail providers need to provide this level of benefits, then let's do that through a different policy mechanism rather than land use controls. Land use controls are inappropriate to be used as a barrier to competition.

With regard to the cemetery plots, Katt advised that the developer has been in contact with the cemetery and they are supportive of this project because it brings a lot more traffic, visibility and market.

With regard to the B-2 on the south side, Katt advised that the developer has committed to not build a big box on the south side; however, it is difficult to identify a big box. For example, B&R has a store in Omaha that is 83,000 square feet. That standard continues to change. The commitment that this developer made to the church with the O-3 buffer is to be respectful of the church and to provide an adequate buffer so that their church and school uses are not adversely affected by the B-2 uses.

As far as the horrors of traffic, Katt suggested that the people that spoke in opposition gave the Commission the exact reasons to vote for this project. There are still way too many people on North 27th Street. Locating another facility for shopping closer to their home is an improvement. This new Wal-Mart store is intended to meet the needs of their existing customers, but it will have benefits to the rest of the community on traffic.

With regard to infrastructure costs, Katt concurred that they have not completed those negotiations. The water and sewer expense is not significant for this project. The only major expense is the extension of the 16" water main in Adams Street, and the developer will need to front that money and be repaid through the impact fees generated. The 16" water main will serve property well beyond this project.

As far as the streets, Katt believes there will be road improvements needed if this project goes forward. The city does not have the money, so the developer will have to pay if he wants to move forward with the project. There is no other way for that to happen because the city does not have the money to pay for the roads.

Pearson noted that the total number of daily trips generated has increased from 31,500 to 39,900. She asked the applicant to demonstrate how this is going to be handled. The traffic engineer for the applicant explained that about 35% of the total trips will be coming from the west on Adams; 40% will be coming from the south; and 23-25% will be coming from the north. Of those trips, over 90% of the trips from the north will be accessing the site from the one-quarter or one-half mile point north of Adams. 50% of those coming along Adams will be using the two north drives. 40% will be traveling east on Adams, with another 10% coming down Windmill Drive or the 87th Street access. About 67% of the traffic coming from the south will be using the same two quarter mile and half mile points. A bigger percentage will use Windmill Drive to access the office uses. A lot of the increase came from the realignment and the new breakdown of the commercial trips. The engineer further explained that the design of the improvements is based off the "peak hour trips", and this development only increases the pm peak hour trips by 100. There are no huge major impacts. The signalization recommendations are the same and the same number of turn lanes are recommended along with the need for widening of Adams Street. Some of those average daily trips (ADT) will come from existing traffic on 84th Street. He urged that the Commission not be overwhelmed with the ADT. The engineers focus more on the peak hour trips. 84th Street will still function and operate at acceptable levels as a four-lane road.

Pearson was not satisfied with the increase in the total number of trips. The engineer reiterated that the improvements being recommended are more related to the pm peak hour trips rather than the average daily total trips. Katt observed that the number of projects that come before the Commission with this level of detail in the traffic studies at this point in the project is slim to none. The review of the traffic information is ultimately one of the functions of the city's professionals and from all of the reports that have been provided to the city, the staff has taken the position that the road network will handle this project as presented, assuming the recommended improvements are made. It is the city's responsibility to determine whether the roads will work. So far, the city has said yes.

Pearson again reiterated that 40,000 trips per day is very large number. Does that sound like a neighborhood center? Katt responded, stating that this deals with a neighborhood center, a commercial center on the south side and a very big residential development. This is a complete composite of the entire development and staff did not ask us to break down the different components. It's all a question of what you put into the model. The applicant tried to accurately project what they believe is likely to develop and happen. This is a very "undense" commercial development. Staff is comfortable with what has been shown.

ANNEXATION NO. 05013**ACTION BY PLANNING COMMISSION:**

August 31, 2005

Taylor moved approval, subject to the annexation agreement, as revised, seconded by Bills-Strand.

Taylor noted that he opposed this project previously. The fact that this is no longer close to the church and school has changed his vote.

Pearson commented that it is good they have moved the big box further north, but all of the traffic is still coming to the same intersection. The traffic is still there. Now they have moved it dangerously close to Stevens Creek. She is trying to envision Stevens Creek meandering beautifully through there with a Wal-Mart standing in front of it. She does not think moving it further north has resolved her concerns. She is also concerned about the southeast corner of the intersection.

Motion for approval, subject to an annexation agreement, as revised, carried 7-2: Esseks, Carroll, Taylor, Sunderman, Krieser, Carlson and Bills-Strand voting 'yes'; Pearson and Larson voting 'no'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05054**ACTION BY PLANNING COMMISSION:**

August 31, 2005

Taylor moved approval of the staff recommendation of conditional approval, as revised today, seconded by Esseks.

Carlson moved to amend that there be no single user footprint over 100,000 square feet, seconded by Pearson.

Carlson stated that this is the tipping point for this particular development in his opinion. That makes the difference. This area is growing and he is pleased with that. The Comprehensive Plan says that it should. The market is ready to do it. The question is that the Comprehensive Plan calls for neighborhood commercial services and the applicant said that is what they are creating. The difficulty Carlson has is that when he envisions a new neighborhood center, it has the residential, which is there, but the commercial is intended to serve that neighborhood

within one to two miles. When you have the separate users it is about traffic draw. Drawing 5-6 miles with a supercenter is a much different impact. Even though the purchase is the same, the traffic motion is quite different and the impact on the transportation network is different.

Bills-Strand does not believe that the Planning Commission should dictate the size of the store. The market should dictate that. Let the people shop where they want to shop. The Comprehensive Plan does not tell us the size of store. For example, Bed, Bath and Beyond is a big box. People have a right to choose where they shop based on their budgets. She does not believe in changing the Comprehensive Plan right now to say we can't have big box stores in certain areas. Based on what is before the Commission, she believes it is a good land use.

Esseks stated that he is opposed to the amendment. Wal-Mart serves a need. It provides for various people to shop late at night, and for people with limited household incomes to stretch their limited resources. He is not sure where else in the northeast area we could locate a Wal-Mart. This is their third attempt. It is a four lane highway. It will be increased to six lanes. He thinks it is an appropriate place to locate a store of this nature. If we snub them this time they will legitimately look elsewhere. Waverly would be foolish not to capture the Lincoln sales tax that would be forfeited. As Lincoln grows to the northeast, there will be even more households who will look for a Wal-Mart. He wishes they would change their benefit policies, but a lot of modest income people want to shop there. The Planning Commission should not pass this motion to legislate against Wal-Mart and other big box stores.

Pearson does not believe the motion precludes Wal-Mart. She knows that they have a floor plan for 100,000 square feet and a floor plan for 80,000 square feet, with the grocery store in one building, home improvement in another and retail in another. That type of development is not unknown to them. It is being done more and more in deference to the fact that a lot of communities do not want to see these mega stores. The parking lots are very large. The 100,000 square foot limitation does not preclude them and she will support the amendment because this puts everybody on an even playing field -- there is no more argument whether it is Wal-Mart or Russ's.

Carroll stated that he is opposed to the amendment. We cannot keep the big boxes out. If we are going to allow that much commercial development, the developer should be allowed to make the decision on the size of the store. He does not want to exclude Wal-Mart just by an amendment like this. He does not want to eliminate their potential on that site.

Taylor stated that he is also opposed to the amendment. To make a business succeed, they should have the opportunity to see the fruits of their investment and design the way they intend. They are already limited by the zoning and our zoning regulations.

Carlson pointed out that his amendment does not call out a specific retailer. His comments are directed to the size of the store, the market area it reaches and the traffic motion.

Motion to amend to limit individual users to 100,000 square feet failed 3-6: Larson, Pearson and Carlson voting 'yes'; Esseks, Carroll, Taylor, Sunderman, Krieser and Bills-Strand voting 'no'.

Discussion on the main motion, as revised by staff:

Carroll pointed out the office and residential uses. The developer is doing a lot of development which the northeast part of Lincoln needs. We're losing sight of the other aspects because of the focus on Wal-Mart. We need the housing and the office space. He believes it is a good design.

Pearson stated that she will vote against it because they increased the trip counts by almost 10,000. They moved it north adjacent to Stevens Creek where we know there is a conflict with the wetlands and the floorplain and we've seen no resolution to that; and they've only moved it far enough so that the building is moved but not the traffic.

Taylor found it interesting that Pearson doesn't mind the building but doesn't want the trips out there. If they are doing a good job of generating business, that is going to generate trips. We need to insure means of helping them along because our community does definitely benefit by it. We need to make it as much of a win-win situation as possible.

Carlson stated that he will vote against the proposal. The Comprehensive Plan calls for a neighborhood center to support the neighborhood and that is not what he sees. They are different kinds of trips. A neighborhood center would not generate 39,000 trips. 84th Street will take up the capacity to serve areas outside of the neighborhood.

Motion for conditional approval, as revised by staff, carried 6-3: Esseks, Carroll, Taylor, Sunderman, Krieser and Bills-Strand voting 'yes'; Larson, Pearson and Carlson voting 'no'.
This is a recommendation to the City Council.

*** Break ***

ANNEXATION NO. 05012;
CHANGE OF ZONE NO. 05055
FROM AG AGRICULTURAL TO I-3 EMPLOYMENT CENTER;
and
USE PERMIT NO. 05007,
ON PROPERTY GENERALLY LOCATED
AT N.W. 56TH STREET AND WEST "O" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 31, 2005

Members present: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the use permit.

Ex Parte Communications: None.

Proponents

1. **Mark Palmer** appeared on behalf of **Lincoln Poultry**, who will be the main user on the property located on Lot 2. He showed a rendering of the site. Lincoln Poultry will be able to access both roadways and the road will extend and access the property further to the west. The property is bordered by railroad on the south and the interstate on the north. They are proposing a frontage road for access along "O" Street.

Larson inquired whether the frontage road is a right turn from "O" Street. Palmer explained that the State of Nebraska is planning to realign "O" Street at this location. The railroad crossing is crossing "O" Street on a diagonal. For the state to provide acceptable clearance underneath the railroad bridge, they are pulling "O" Street up to the north and running it more perpendicular under the railroad crossing. When they do that, the frontage road will align on the north side of "O" Street similar to the frontage road on the south side between 70th and 84th. It will be a full median opening and full access, but Public Works does not foresee that it will be a signalized intersection. The developer will leave enough room for a driveway access to allow trucks to come in. There will be multiple access points to the Lincoln Poultry property. Larson does not believe there should be left turns into the frontage road. Palmer stated that the frontage road is lining up with what the state is proposing for access points. Larson thinks there will be more traffic on the frontage road than the other road. Palmer pointed out that Lincoln Poultry is only proposing one lot at that location. It depends on what goes on to the west. Public Works determined the location of the traffic signal. Lincoln Poultry will not build the frontage road until the state gets the realignment done. The trucks leaving the property will come down Westview Circle and out at the location where there is a signal. The front of the building is facing east and the rear is on the diagonal.

2. **Don Wesely** appeared on behalf of **Lincoln Poultry**, and clarified that there will be two access points. The city needs industrial sites. This whole area could become an industrial development zone and a great benefit. The sewer line will run from the south and will come across the property and north of the interstate, where there are plans for industrial development as well. This is the start of a very significant set of industrial developments. Nebraska Machinery will have additional development in this area as well. 45 acres of the Lincoln Poultry site will be available for other development. Lincoln Poultry will only use 20 acres.

There was no testimony in opposition.

ANNEXATION NO. 05012

ACTION BY PLANNING COMMISSION:

August 31, 2005

Taylor moved approval, subject to an annexation agreement, seconded by Larson and carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson, and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05055

ACTION BY PLANNING COMMISSION:

August 31, 2005

Taylor moved approval, seconded by Larson and carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson, and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

USE PERMIT NO. 05007

ACTION BY PLANNING COMMISSION:

August 31, 2005

Taylor moved approval of staff recommendation of conditional approval, seconded by Larson and carried 9-0: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson, and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

ITEMS NOT APPEARING ON THE AGENDA:

August 31, 2005

Members present: Esseks, Carroll, Taylor, Larson, Sunderman, Pearson, Krieser, Carlson and Bills-Strand.

Richard Esquivel, 733 W. Cuming, was told at a recent City Council meeting that impact fees only account for about 50% of the total cost, which raises questions for the taxpayers as to why part of their money is supporting new development. When he bought his first house he was assessed fees when he improved the sewer. He would like to know why public money is going to support private industry and private business for their gain. He believes that Lincoln Poultry is getting some type of tax benefit; the Downtown Master Plan gets public money for private business. Public money is for support of public sewers and roads, not for private business. Public monies can be used for parks, bike trails, roads, sewer, traffic, and schools, but why private industry, why private business? No one has helped him with his private business. Why are we doing this now?

Bills-Strand suggested that there is misleading information on development. Impact fees are to go toward the arterial streets and shared streets. The developer pays for all the improvements within the subdivision -- sewer, water, sidewalks, street trees, lighting. Nothing is paid by the city within any development. Esquivel indicated that this is not what he was told by the city water works.

Larson suggested that we have to look at the community as a whole. If we look to just what we are doing for ourselves, we're not going to have a very good city. We have to look at things that are going to help the entire community. Most people are living in neighborhoods that someone else paid for. They have a moral obligation to help pay for where the new people are going. That's part of the philosophy of one community and helping each other.

Esquivel stated that he is talking about helping private businesses. When you have to give Lincoln Poultry special tax benefits so that they will expand – that is a private entity. Larson believes that is a TIF benefit.

There being no further business, the meeting was adjourned at 5:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 14, 2005.